

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, October 26, 2016**

**Hearing Room**

**5B**

10:00 AM

**8:15-13688    Annalysa Sylvie Rayburn**

**Chapter 11**

**#1.00    STATUS CONFERENCE Re: Chapter 11 Voluntary Petition  
(cont'd from 8-3-16)**

Docket        1

**Tentative Ruling:**

Tentative for 10/26/16:  
Continue status conference to December 14, 2016 at 10:00 a.m. so that plan  
can be evaluated.

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Tentative for 8/3/16:  
Continue to October 26, 2016 at 10:00 a.m.

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Tentative for 5/4/16:  
Continue status conference for about 90 days, to come in at or shortly after  
confirmation.

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Tentative for 1/6/16:  
Has a disclosure statement hearing been scheduled yet?

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Tentative for 10/28/15:  
Status?

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Tentative for 9/2/15:  
Deadline for filing plan and disclosure statement: November 30, 2015

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**CONT... Annalysa Sylvie Rayburn**

**Chapter 11**

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of claims bar deadline by: September 14, 2015

<b>Party Information</b>
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**Debtor(s):**

Annalysa Sylvie Rayburn

Represented By  
Michael Jones

**Movant(s):**

Annalysa Sylvie Rayburn

Represented By  
Michael Jones

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**8:16-13467 Mark Wayne Hill**

**Chapter 11**

**#2.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition  
(con't from 9-28-16)**

Docket 1

**Tentative Ruling:**

Tentative for 10/26/16:  
No report?

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Tentative for 9/28/16:  
Why no status report? Dismiss?

<b>Party Information</b>
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**Debtor(s):**

Mark Wayne Hill

Pro Se

**United States Bankruptcy Court  
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**5B**

10:00 AM

**8:16-13873 Tho Van Phan**

**Chapter 11**

**#3.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Individual.**

Docket 1

**Tentative Ruling:**

Deadline for filing plan and disclosure statement: June 1, 2017  
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.  
Debtor to give notice of claims bar deadline by: December 19, 2016

The court is not inclined to keep the reorganization in abeyance while all claims are litigated, which might take years. Rather, a plan should be flexibly structured to allow resolution of claims post confirmation. Who owns the business and is that the only income?

<b>Party Information</b>
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**Debtor(s):**

Tho Van Phan

Represented By

Michael R Totaro  
Michael R Totaro  
Michael R Totaro  
Michael R Totaro  
Michael R Totaro  
Michael R Totaro  
Michael R Totaro

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**8:16-13915 CYU Lithographics Inc**

**Chapter 11**

**#4.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Non-Individual.**

Docket 1

**Tentative Ruling:**

Deadline for filing plan and disclosure statement: January 31, 2017  
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.  
Debtor to give notice of claims bar deadline by: December 19, 2016

<b>Party Information</b>
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**Debtor(s):**

CYU Lithographics Inc

Represented By  
John H Bauer

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**8:12-10028 Kent Douglas Brush and Catherine Elizabeth Brush**

**Chapter 11**

**#5.00** United States Trustee's Motion to Dismiss or Convert Reorganized Debtors' Case Under 11 U.S.C. Section 1112(b) and Local Bankruptcy Rule 3020-1 for Failure to File Post-Confirmation Status Reports.

Docket 148

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR; VOLUNTARY  
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT  
FILED 10/20/16**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Kent Douglas Brush

Represented By  
Bert Briones

**Joint Debtor(s):**

Catherine Elizabeth Brush

Represented By  
Bert Briones

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**8:13-15645 Claudia Mariscal**

**Chapter 11**

**#6.00** Post-Confirmation Debtor's Motion to Reopen Her Individual Chapter 11 Case (con't from 10-05-16 per order approving fourth stip. to continue entered 9-26-16)

Docket 123

**Tentative Ruling:**

Reopen case. Case to reclose in 60 days absent further order.

<b>Party Information</b>
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**Debtor(s):**

Claudia Mariscal

Represented By  
John H Bauer  
Richard L. Sturdevant

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**Hearing Room**

**5B**

10:00 AM

**8:13-15645 Claudia Mariscal**

**Chapter 11**

**#7.00** Post-Confirmation Debtor's Motion For Order Of Contempt And Judgment Against Ocwen Loan Services For Violation Of The Individual Debtor's Chapter 11 Plan; Request For Legal Fees, Costs And Sanctions (con't from 10-05-16 per order approving fourth stip. to continue entered 9-26-16)

Docket 124

**Tentative Ruling:**

This is Claudia Mariscal's ("Debtor") motion requesting that this Court hold Ocwen Loan Services ("Ocwen") in contempt for violation of the Debtor's confirmed Chapter 11 Plan ("Plan"). The Debtor seeks sanctions in the form of attorneys' fees and costs expended in trying to obtain compliance with the court's order confirming the Plan. Furthermore, the Debtor requests that Ocwen: (1) cancel the foreclosure sale process; (2) delete all negative credit related to the foreclosure; (3) prepare a letter admitting that any Notice of Default was filed in error; (4) deduct all late fees and other improper financial penalties from Debtor's mortgage billing; and (5) pay Debtor monetary damages for its alleged deliberate and wrongful actions in this case. Punitive damages are also requested. This motion was originally set for hearing on June 29, 2016 and *has been continued three times by stipulation* of the parties; ostensibly, each time the purpose of the further continuances was so that an agreed set of facts could be presented to the court (if the matter were not otherwise resolved). Apparently, however, nothing is resolved, and, astoundingly, the parties still do not even agree on the basics. Ocwen has now filed an opposition, objecting to Debtor's failure to comply with proper procedure and arguing that Debtor's request is not supported by adequate evidence. Debtor has filed a reply.

The court is dismayed. This really should not be that difficult. The parties ought to be able to confirm the veracity (or lack thereof) of what debtor has contended, i.e. that she has made each and every payment as provided in the confirmed plan either on time or even early, and in amounts actually emanating from



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**CONT...**

**Claudia Mariscal**

**Chapter 11**

Ocwen. Ocwen argues that the payments are in fact slightly less than called for in the plan (\$3,960.54 vs. \$3,949.20). But if, as debtor contends, this was as a result of Ocwen's own notices because of "a slight stated surplus in my escrow account", then this is hardly grounds for claiming default under the plan or initiating foreclosure. Particularly this would be so if Ocwen's own statements confirm the lower number (See barely legible Exhibit "D"). If, as is contended, all payments were in fact made on time or even early, this really makes Ocwen look bad. Then there is the question of the whereabouts of some \$43,441.20 in allegedly tendered mortgage payment and allegedly \$26,147 paid on arrearages. Someone must have cashed these checks. Hasn't anyone thought to obtain the documents including reverse sides to verify they were cashed? Then there are questions about the shifting interest rates on the loan month to month seeming to contradict Ocwen's own correspondence.

Ocwen's opposition invokes evidentiary objections and procedural arguments. But nothing is argued about the substance. Moreover, the arguments all have the feel of artful attempts to weave and dodge around the pivotal questions. In view of Ocwen's alleged previous involvement in similar questionable conduct in connection with a consent judgment resulting in a reported \$2.2 billion settlement, the court cannot fathom why this institution would be playing with such dynamite....again. But if this turns out indeed to be what the debtor has argued, then clearly *very heavy sanctions* are the only way to get through to the appropriate decision makers at Ocwen to clean up the institution's proverbial accounting act.

But this motion as staged is procedurally incorrect. LBR 9020-1 requires contempt proceedings be initiated by the filing of a motion and a proposed order to show cause re contempt. Only if the court determines that issuance of an order to show cause re contempt is warranted, then the merits of the claim are considered. Debtor has completely side-stepped this requirement. Rather than addressing the merits in the muddled fashion they are presented, the court will treat this as a hearing on the issuance of the OSC. Debtor has asserted that she has been making payments pursuant to her confirmed Chapter 11 plan and that Ocwen has not been accepting them or otherwise is not complying with the terms of the plan. Debtor has asserted

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**CONT...**

**Claudia Mariscal**

**Chapter 11**

that there has been a violation of this court's order. The appropriate remedy for a willful violation of a court order is contempt. Therefore, an order to show cause re contempt will issue to Ocwen, and a further hearing should be scheduled to consider the merits of Debtor's claims.

The parties are invited to seek formal mediation in meantime using someone from the court's panel, or otherwise. Ocwen will no doubt voluntarily agree to postpone any foreclosure that may be pending (unless it wants to double down...no make that triple down ...in which case it had really better be right!) If such discretion is however not the case and foreclosure is imminent before the continued hearing, an emergency motion will be entertained. Counsel for Ocwen should also make it very clear to the institutional decision makers that it will be well worth their time to get to the bottom of this, and for real this time and quickly, before any further damage is done. This is because if debtor turns out to be correct, the court views such conduct as a serious affront to the whole system of bankruptcy reorganization in this country, for which a serious statement needs to be made.

*OSC shall issue to Ocwen to show cause why it should not be held in contempt and sanctioned including punitive sanctions.*

<b>Party Information</b>
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**Debtor(s):**

Claudia Mariscal

Represented By

John H Bauer

Richard L. Sturdevant

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**8:14-16592 Miguel Angel Ibarra and Graciela Arana de Ibarra**

**Chapter 11**

**#8.00 Order Setting Post-Confirmation Status Conference**

Docket 1

**Tentative Ruling:**

Continue to any hearing on motion for final decree filed October 13, 2016.

<b>Party Information</b>
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**Debtor(s):**

Miguel Angel Ibarra

Represented By

Steve Lopez

Steve Lopez

Steve Lopez

Tuan Le

Tuan Le

Tuan Le

**Joint Debtor(s):**

Graciela Arana de Ibarra

Represented By

Steve Lopez

Tuan Le

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**8:16-12943 Jalal Neishabouri**

**Chapter 11**

**#9.00** Motion for Order Approving Cash Collateral Stipulation

Docket 45

**Tentative Ruling:**

Grant per stipulation. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Jalal Neishabouri

Represented By  
Marc C Forsythe

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**5B**

10:00 AM

**8:16-14257 Shannon Marie Magness and Kelly Scott Johnson**

**Chapter 13**

**#10.00** Lessor's Objection To Debtor's Certification And/Or Debtor's Further Certification Concerning Residential Property And Notice Of Hearing (11 USC § 362(l)(3)(A) )

Docket 13

**Tentative Ruling:**

The problem here is there is no lease. Any right to possession has been terminated by unlawful detainer judgment, and the stay pending appeal is reportedly dissolved. Even if this were not the case the foreclosure by the first renders the movant not adequately protected. *Grant.*

<b>Party Information</b>
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**Debtor(s):**

Shannon Marie Magness	Pro Se
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**Joint Debtor(s):**

Kelly Scott Johnson	Pro Se
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**Trustee(s):**

Amrane (SA) Cohen (TR)	Pro Se
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11:00 AM

**8:16-14257 Shannon Marie Magness and Kelly Scott Johnson**

**Chapter 13**

**#11.00** Motion for relief from the automatic stay UNLAWFUL DETAINER

THE WILLIAM G. JOINER TRUST DATED 2-6-02  
Vs.  
DEBTOR

Docket 15

**Tentative Ruling:**

See #10.

<b>Party Information</b>
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**Debtor(s):**

Shannon Marie Magness	Pro Se
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**Joint Debtor(s):**

Kelly Scott Johnson	Pro Se
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**Trustee(s):**

Amrane (SA) Cohen (TR)	Pro Se
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11:00 AM

**8:16-13952 Fifth and Broadway Botanical Services Inc.**

**Chapter 7**

**#12.00** Chapter 7 Trustee's Motion for Order Authorizing Trustee To 1. Conduct an Auction of Substantially all of the Estate's Personal Property Including Inventory; Employ Credit Management Association as Auctioneer; 3. Payment for Certain Expenses to Maintain Estate Assets Prior to Auction; Payment for Professional Removal and Cleaning Services; 5. Authorization to Pay the Landlord \$5,000 for Rent from the Petition Date to December 1, 2016; and 6. Abandon Assets Not Sold At Auction  
**(OST Signed 10-21-16)**

Docket 15

**Tentative Ruling:**

Per OST, opposition due at hearing.

<b>Party Information</b>
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**Debtor(s):**

Fifth and Broadway Botanical

Represented By  
Leslie A Cohen

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Richard A Marshack  
David Wood

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11:00 AM

**8:16-13952 Fifth and Broadway Botanical Services Inc.**

**Chapter 7**

**#13.00** Trustee's Motion for Order Abandoning The Estate's Interest, if Any, in Certain Penske Trucks and Trailers and Certain Books and Records of the Debtor.  
**(OST Signed 10-21-16)**

Docket 17

**Tentative Ruling:**

Per OST, opposition due at hearing.

<b>Party Information</b>
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**Debtor(s):**

Fifth and Broadway Botanical

Represented By  
Leslie A Cohen

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Richard A Marshack  
David Wood